

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 03, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ZEBULON KURRIN SCHILPEROORT,

Petitioner,

v.

NO NAMED RESPONDENT,

Respondent.

1:20-CV-03105-SAB

**ORDER SUMMARILY
DISMISSING HABEAS
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360. While Petitioner could

1 conceivably remedy this issue, the Court finds the additional deficiencies discussed
2 below would make amendment futile.

3 EXHAUSTION REQUIREMENT

4 Petitioner challenges his 2013 Yakima County plea of guilty to Second
5 Degree Rape of a Child. He was sentenced to 200 months' incarceration.
6 Petitioner indicates that he did not appeal his conviction and sentence. ECF No. 1
7 at 2.

8 In his grounds for relief, Petitioner argues the State of Washington has no
9 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long
10 been settled that state courts are competent to decide questions arising under the
11 U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty of
12 the state court, as much as it is that of the federal courts, when the question of the
13 validity of a state statute is necessarily involved, as being in alleged violation of
14 any provision of the federal constitution, to decide that question, and to hold the
15 law void if it violate that instrument."); *see also Worldwide Church of God v.*
16 *McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as
17 competent as federal courts to decide federal constitutional matters). Therefore,
18 Petitioner's arguments to the contrary lack merit.

19 Additionally, before a federal court may grant habeas relief to a state
20 prisoner, the prisoner must exhaust the state court remedies available to him. 28
21 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
22 requires that a prisoner give the state courts an opportunity to act on his claims
23 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.
24 838 (1999). A petitioner has not exhausted a claim for relief so long as the
25 petitioner has a right under state law to raise the claim by available procedure. *See*
26 *Id.*; 28 U.S.C. § 2254(c).

27 To meet the exhaustion requirement, the petitioner must have "fairly
28 present[ed] his claim in each appropriate state court (including a state supreme

1 court with powers of discretionary review), thereby alerting that court to the
2 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,
3 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court
4 by describing the factual or legal bases for that claim and by alerting the state court
5 “to the fact that the ... [petitioner is] asserting claims under the United States
6 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249
7 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in
8 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513
9 U.S. at 365–366.

10 Furthermore, to fairly present a claim, the petitioner “must give the state
11 courts one full opportunity to resolve any constitutional issues by invoking one
12 complete round of the State's established appellate review process.” *O'Sullivan*,
13 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
14 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
15 (1971). It appears from the face of the Petition and supporting documents that
16 Petitioner has not exhausted his state court remedies as to each of his grounds for
17 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
18 court remedies.

19 **GROUND FOR FEDERAL HABEAS RELIEF**

20 Petitioner asserts that the Washington state constitution contradicts the
21 federal constitution regarding the Fifth Amendment right to “presentment or
22 indictment of a Grand Jury.” ECF No. 1 at 5. He claims “no bill of indictment”
23 was brought against him rendering his arrest, conviction and imprisonment illegal.
24 *Id.*

25 Petitioner seems to argue that because the state courts have defied “federally
26 established procedures and processes for the adjudication of crimes” only “a court
27 of federal jurisdiction” has jurisdictional authority over his claims. *Id.* at 10. His
28

1 bald assertion that “due process of the law was ignored” is unsupported by his
2 factual allegations.

3 The United States Supreme Court stated long ago: “Prosecution by
4 information instead of by indictment is provided for by the laws of Washington.
5 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277
6 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the contrary presented
7 in his four grounds for federal habeas relief are legally frivolous.

8 Because it plainly appears from the petition and accompanying documents
9 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,
10 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254
11 Cases in the United States District Courts. **IT IS FURTHER ORDERED** that all
12 pending Motions are **DENIED as moot**.

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
14 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
15 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
16 taken in good faith, and there is no basis upon which to issue a certificate of
17 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
18 appealability is therefore **DENIED**.

19 **DATED** this 3rd day of September 2020.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

25 Stanley A. Bastian
26 Chief United States District Judge
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